IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5904 OF 2003

Pravin Jagamandar Garg. .. Petitioner.

vs.

Anandrao Vithoba Satav

& Ors. . .. Respondents.

Mr. A.M. Joshi for petitioner.

Mr. Hitesh Vyas with Rohit Pawaskar

for Respondent Nos. 1 & 2.

CORAM : A.P. DESHPANDE, J.

DATE : 6th November, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The family of the plaintiffs and the defendant nos. 2 to 9 was joint and it came to be separated on account of effecting a partition in the year 1958. The petitioner herein is the original respondent no. 1 who has purchased landed property admeasuring 1 hectare 90 Aars bearing Gat No. 1636 (Old Survey No. 197) situated at Village Wagholi,

Taluka Haveli, Dist. Pune from the original defendant nos. 2 to 9 (who are respondent nos. 3 to 10 in this petition). The present respondent nos. 1 and 2 are the original plaintiffs who brought a suit claiming a right of preemption for purchase of the suit land from the defendant nos. 2 to 9 by raising various pleas including the plea to the effect that the suit property was earlier a joint family property and that the plaintiffs are the adjacent land owners. By claiming right of preemption or a right of preferential purchase, a prayer was made for cancellation of the sale deed executed in favour of the present petitioner by respondent nos. 3 o 10. The original plaintiffs have categorically pleaded that the suit property was an ancestral property of the plaintiffs and defendant nos. 2 to 9 and in the partition the suit property had fallen to the share of the defendant nos. 2 to 9. It is further stated that besides the suit property, other properties had also been partitioned between the plaintiffs and defendant nos. 2 to 9. On the basis of the claim to purchase the suit property under a right of preemption, suit came to be filed.

3. At a later point of time, the plaintiffs moved an application seeking to amend the plaint. In the proposed amendment it is stated that some incorrect statements are made in the plaint which

need to be corrected. In the original plaint, the plaintiffs did not dispute the title of the defendant nos. 2 to 9 to sell the property and on the contrary asserted the title of defendant nos. 2 to 9 and claimed a preferential right to purchase the same and questioned the legality of the sale deed executed in favour of the petitioner on that count. Now, in the proposed amendment it is averred that the suit property was wrongly included in the joint family properties and that the suit property is exclusively owned by the plaintiffs as it was self-acquired property of Vithoba. The amendment application was opposed by the petitioner by raising two objections, (i) that if the amendment is granted, the same would change the nature of the suit inasmuch as in the original plaint the plaintiffs had admitted the title of defendant nos. 2 to 9 and claimed right of preemption for purchase of the suit property whereas by the proposed amendment, the plaintiffs are asserting title and ownership in themselves by contending that the suit property was wrongly included in the joint family property which was partitioned in 1958 and the said property is self-acquired property of Vithoba and thus, the plaintiffs are exclusive owners thereof, and (ii) that the plaintiffs are trying to withdraw the admissions made in the plaint which vests the petitioner with the legal right. It is yet again contended that the plaint admits the ownership and

title of defendant nos. 2 to 9 from whom the petitioner had purchased the property whereas the proposed amendment seeks to withdraw the said admission and such withdrawal is impermissible in law. The trial Court allowed the amendment and aggrieved thereby, this writ petition has been filed.

4. Placing reliance on the judgment of the Apex Court in the case of Heeralal v. Kalyan Mal, reported in AIR 1998 SC 618 it is submitted that withdrawal of such admission cannot be permitted. The facts of the case before the Supreme Court are some-what similar to the facts of the present case. In the said case the defendants had pleaded in the written statement that out of 10 properties seven properties are joint family properties whereas only three properties are claimed to be exclusively belonging to the defendants. At a later stage, the defendants proposed to withdraw the admission with regard to seven properties by claiming that the same were also the exclusively owned properties of the defendants. The Supreme Court allowing the appeal rejected the proposed amendment sought by the defendants.

5. In the facts of the present case, it is crystal clear that the plaintiffs in the original plaint claimed right of preemption or right of

preferential purchase of the suit land from the original defendant nos. 2 to 9. This by itself pre-supposes ownership and title of the defendant nos. 2 to 9. It is thus clear that if the proposed amendment is allowed, the same not only changes the very foundation of the plaintiffs' case but goes to permit them to withdraw very vital admissions made in the plaint. I am of the clear view that the trial Court has committed a patent illegality in allowing the amendment. The trial Court recorded the settled principle in law that admission given by a party cannot be withdrawn but proceeded further wrongly to hold that even if it be so, the amendment has to be allowed if the same is necessary to determine the real controversy. In my considered view, the impugned order passed by the trial Court is patently illegal as the proposed amendment changes the very nature of the suit and goes to permit the plaintiffs to withdraw vital admissions made by them in the plaint. The impugned order is also bad in law as it deprives the petitioner of an accrued right flowing from the admissions made in plaint.

6. In the result, the petition deserves to be allowed and hence I allow the same. The impugned order passed by the 6th Jt. Civil Judge, Senior Division, Pune, dated 12.6.2003 stands quashed and set aside.

7. Rule is made absolute in the above terms. No order as to costs.

(A.P. Deshpande, J.)